



PROTECTING OUR WATERS, PROTECTING THEIR USE

Senate Bills 850-852, 854, and 857
Senator Patty Birkholz

FIVE-BILL PACKAGE CONSENSUS-BASED

- A product of a large workgroup, over 100 hours of workgroup sessions.
- Supported by the MDEQ, MDNR, Michigan Chamber, MMA, Chemical Council, Aggregates Association, Farm Bureau, MUCC, Trout Unlimited, NWF, MML, MTA, MAC, Road Builders, Well Drillers, MEC and PIRGIM.
- Accommodates all current uses, while protecting our waters into the future.

BACKGROUND

- Great Lakes Conservation Task Force concluded that it was important to take a step-by-step approach to protecting our groundwater.
- Public Act 148 of 2003 set up a foundation for a water withdrawal statute. It created an advisory council and a requirement for an inventory of groundwater resources.
- We have maps that show where and how groundwater flow is critical to both citizens and natural resources.



BACKGROUND (Continued)

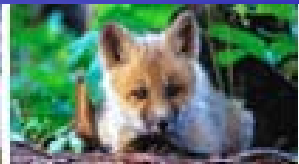
- Both the Senate Natural Resources Committee (after five public hearings statewide) and the Groundwater Conservation Advisory Council (after two years of deliberation) have issued findings.
- “We have no water crisis in this state, but it is wise to act now to implement a plan that protects both our waters and those who must and will use them.”
- “Focus must be on fair application of law -- no need to unfairly punish water users with a law that requires unnecessary permits and new regulation.”

KEY LEGAL ISSUES

- The Attorney General has confirmed that the state has the authority to regulate water use as a matter of the Public Trust Doctrine. We are obligated to protect our waters and water dependent natural resources for the benefit of the public.

KEY LEGAL ISSUES (Continued)

- Michigan follows the doctrine of Reasonable Use water law -- all persons have the right to reasonable use of the state's water. No one can own an exclusive right to water (water is not treated as a mineral).



CORE PRINCIPLES OF THE PACKAGE

- Grandfather in all existing water users and provide room to expand without a need for a permit.
- Allow all new large users (over 100,000 gallons a day but under 2 mgd) to simply register their use -- no need to get a permit. Permits are only required for 2 million gallons a day (mgd) and up.
- Protect key water-dependent natural resources (those that depend upon groundwater flow).
- Builds in voluntary water use conservation plans.
- Builds in Annex 2001 definitions of what constitutes a diversion and what constitutes a consumptive use -- water bottles of less than 5.7 gallons are not a diversion.

SENATE BILL 850 (Birkholz)

- Grandfathers in all existing users. The act clearly states that all existing users as of the date of this act will not be subject to this new part, unless they increase their use beyond their “baseline capacity.” Baseline capacity is liberally defined so that all current users have significant room to expand without having to get a permit.



DEFINES “DIVERSION” AND “CONSUMPTIVE USE”

- Two new definitions are added to state law to finally settle the issue of what constitutes a diversion and what constitutes a consumptive use.
- Taken from Annex 2001 -- consensus based definitions with two exemptions for commercial travel purposes.

“DIVERSION”

- “A transfer of water by pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a watercourse, tanker truck, rail tanker, or similar means from the Great Lakes Basin into a watershed outside of the Great Lakes basin. Includes a transfer of water withdrawn from the waters of the basin in a container greater than 5.7 gallons” and does not include a consumptive use.



“CONSUMPTIVE USE”

- Means that portion of water withdrawn or withheld from the Great Lakes basin and assumed to be lost or otherwise not returned to the Great Lakes basin due to evaporation, incorporation into products or agricultural products, use as part of the packaging of products or agricultural products or other processes.



Consumptive use includes a withdrawal that is packaged within the basin in a container of 5.7 gallons or less.

SENATE BILL 850

(Continued)

- Minimal use of permits. Only those new users who withdraw in excess of 2 mgd will have to get a Part 327 permit -- all others will simply register their use.
- Sets up a two-phase process for implementing a statewide program to protect our water resources.

TWO PHASES

- **Phase One** -- Adopt Wisconsin approach that creates defined “cautionary use zones” near critical streams. We know that these waters depend on a healthy flow of groundwater -- they act like barometers of groundwater conditions.



TWO PHASES (Continued)

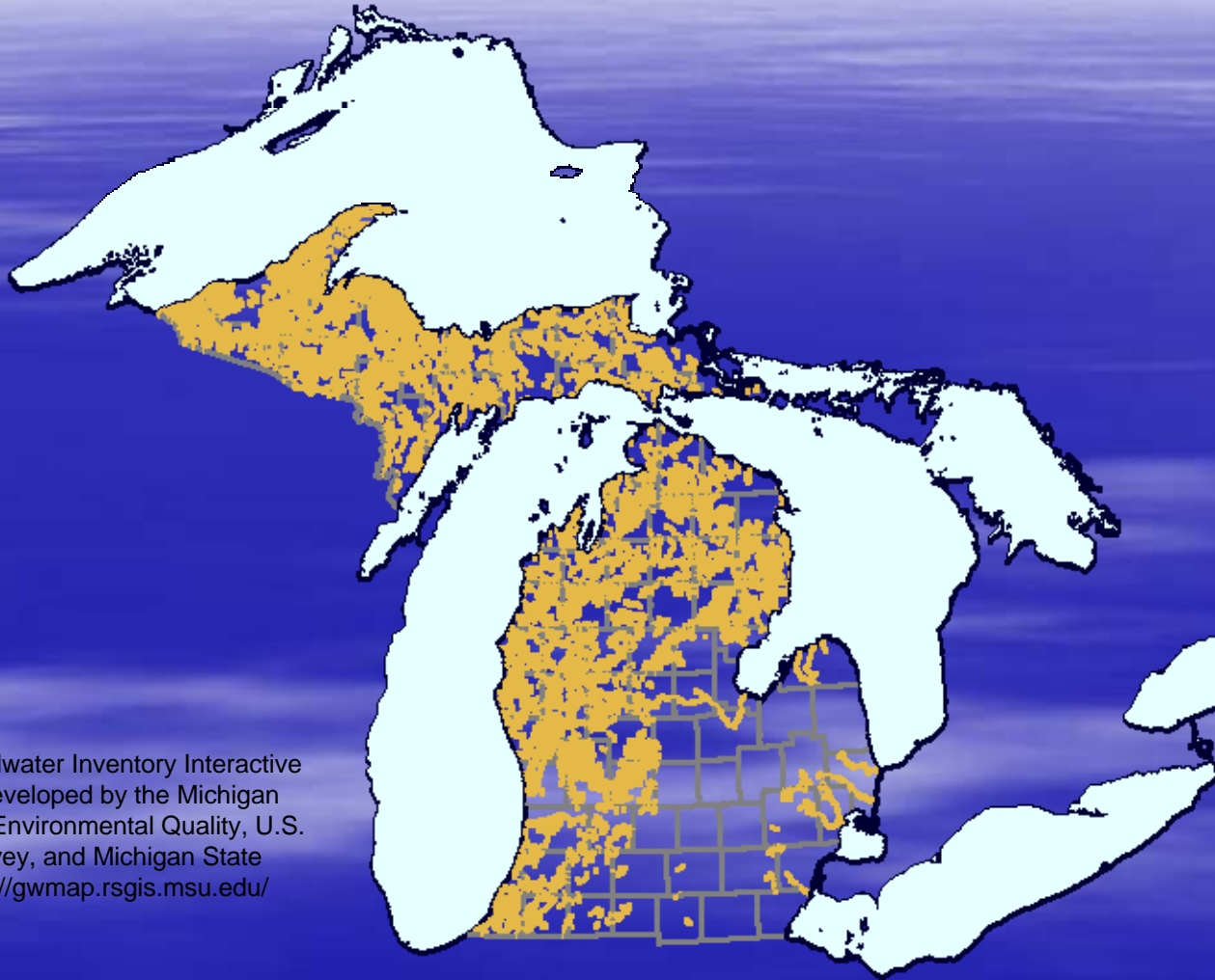
- **Phase Two** -- Implement a science-based water use assessment tool that will have statewide application. Use of the tool is important as it will allow us to know how a use affects specific conditions.

PHASE ONE

Create “Cautionary Use Zones” Around Key Streams

- The Department of Natural Resources (DNR) has a specific list of high quality streams that depend on sustained groundwater flow. In order to not disturb that flow, a proposed new user should consider a location (remembering all current users are exempt) 1320 feet outside the cautionary use zone or drill a well that is at least 150 feet in order to be presumed safe from damaging the stream.
- These zones do not prohibit use in those areas, they are regarded as cautionary use zones. All those outside of these zones will be presumed not to cause an adverse resource impact.

DESIGNATED TROUT STREAMS



Source: Groundwater Inventory Interactive Map Viewer, Developed by the Michigan Department of Environmental Quality, U.S. Geological Survey, and Michigan State University, <http://gwmap.rsgis.msu.edu/>



RSGIS-MSU

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PHASE TWO

Create a Consensus

Science-Based Water Assessment Tool

- The “cautionary use zones” would be replaced by a water withdrawal assessment tool that will allow any new large quantity user to simply point and click on the map of the state and determine whether or not the use may cause an adverse resource impact.
- This model must be affirmatively adopted by the Legislature once it has been built by the Groundwater Conservation Advisory Council, working in consultation with the DNR.

PERMITTING ONLY FOR THE REALLY LARGE NEW USERS

- To meet our requirements under the Great Lakes Charter, each state was obligated to develop a permitting program to regulate withdrawals in excess of 2 million gallons a day. Again, all existing users of this size are presumed not to cause an adverse resource impact.
- There would be a separate standard of 5 mgd for withdrawals from the Great Lakes where impacts on the waters are not as great.

OPTIONAL PERMITTING AVAILABLE

- Allow for any person to voluntarily obtain a finding of “no adverse resource impact.”
- This provision will allow any new user to seek a written finding by the DEQ that no adverse resource will occur (some companies want this specific endorsement).



NEW LEGISLATIVE OVERSIGHT

- Builds in a new provision that if our state ban on water diversions is ever held illegal, all proposals to divert waters must be approved by the Legislature.
- Adds a second layer of protection against any attempt to divert our waters.



Michigan State Senate

SENATE BILL 851 (Patterson)

- Charge the current Groundwater Conservation Advisory Council with the new responsibility to build the assessment tool that will guide water users.
- The recommendations for the tool must be adopted by the Legislature into law for the tool to have effect.



SENATE BILL 852 (Van Woerkom)

- Improves water use reporting data -- farmers now report.
- Establishes registering and reporting requirements. Large users must register their baseline capacity once and then report their water use annually.
- Provides for a Freedom of Information Act (FOIA) exemption for certain key water use information.
- Promotes the development of water conservation plans by requiring sectors to report to the DEQ on progress made in establishing these plans.

ENCOURAGE COMMUNITY WATER USE GROUPS SB 854 (Basham)

- Allows for large users within a watershed to work to resolve potential impacts **on water resources**.
- This program is similar to the current method for resolving complaints **between** water users.
- The DEQ may issue orders to temporarily restrict water use if a problem occurs that has not been resolved by the users.

SENATE BILL 857 (Brater)

- Allows for municipal water supply systems to use their current Safe Drinking Water Act (SDWA) permit as evidence of no adverse resource impact.
- Requires the DEQ to factor in the importance of public health when considering a permit for a new water supply system.



PERMITS FOR WATER BOTTLERS

- Senate Bill 857 will expand the current Safe Drinking Water Act (SDWA) permit process to require water bottling companies that want to withdraw in excess of 250,000 gallons a day to obtain a SDWA permit.
- Must show no adverse resource impact, proposed use is reasonable under common law water principles, the person will undertake to address hydrologic impacts, shall consult with local government officials in assessing these impacts and must pay a \$5,000 fee.

KEY ISSUES RAISED AND SOLVED!

- Develop a biologically-based method for assessing impacts on key natural resources and implement safeguards? **YES**
- Grandfather in existing users? **YES**
- Minimal use of Permits? **YES**
- Allow significant room for expansion without having to get a permit? **YES**
- Reliable permitting decisions so that the DEQ can't change a permit without clear and convincing evidence? **YES**
- No Rulemaking? **YES**
- Reasonable permit fees with deadlines for processing? **YES**
- Farmers reporting information is protected? **YES**
- Don't treat all areas of the state the same -- recognize that each area of the state has unique water conditions? **YES**
- Allow for water users to get together to discuss water problems prior to DEQ involvement? **YES**
- Allow for use of existing permits (NPDES -- quarries and SDWA --municipals and Part 316B -- utilities)? **YES**
- Define what constitutes a diversion so that water bottles are not considered a diversion? **YES**

BROAD BASED SUPPORT

- Michigan Chamber of Commerce
- Michigan United Conservation Clubs
- Michigan Manufacturers Association
- Trout Unlimited
- Michigan Department of Environmental Quality
- Michigan Aggregates Association
- National Wildlife Federation
- Michigan Chemical Council
- Michigan Water Bottlers Association
- Michigan Municipal League
- Michigan Association of Counties
- Michigan Townships Association
- Michigan Road Builders Association
- Michigan Well Drillers Association
- Michigan Environmental Council
- Public Interest Research Group of Michigan

COMMENTS

The Detroit News -- November 24, 2005

- “Michigan needs to enact sound policies that defend against Great Lakes water diversions and place environmental protection in balance with the need for water to drive our economy. Senate Bills 850-852 are solid, well-crafted proposals. The time to act on water policy issues has never been better.”

JIM BARRETT, President and Chief Executive Officer, Michigan Chamber of Commerce, Lansing

COMMENTS

Detroit Free Press -- November 7, 2005

- “The Birkholz plan would also bring important certainty to water users who must make business decisions affecting employment based on reliable access to water.”

JIM BARRETT, *President and Chief Executive Officer, Michigan Chamber of Commerce, Lansing*



COMMENTS:

- “These bills are a huge step forward for Michigan and we thank the Legislature and the Governor for their leadership.” “Our Great Lakes and all of our waterways are, for the first time, being provided protection from overuse by large water users.”

JAMES CLIFT, Policy Director for the Michigan Environmental Council

THANK YOU!



LET US KNOW WHAT
YOU THINK!

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